

Amendment No. 1 to HB2372

Sargent  
Signature of Sponsor

**AMEND Senate Bill No. 2234**

**House Bill No. 2372\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-2004(23), is amended by deleting the current language in its entirety and by substituting instead the following:

(23) "Intangible expense" means an expense related to, or in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income on a separate entity basis. "Intangible expense" also means interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property.

SECTION 2. Tennessee Code Annotated, Section 67-4-2006(b)(2)(N), is amended by deleting the current language in its entirety and by substituting instead the following:

(N)

(i) Any intangible expense, or portion thereof, that is paid, accrued or incurred in connection with a transaction with one (1) or more affiliates if the commissioner determines, upon application by the taxpayer, that such expense, or portion thereof, did not have as its principal purpose the avoidance of the tax levied by this part. The commissioner's review of the taxpayer's application shall include the

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considerations outlined in § 67-4-2014(c). The commissioner shall approve any application for the deduction of any intangible expense, or portion thereof, that is:

(a) Paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States;

(b) Paid, accrued, or incurred to an affiliate when the affiliate, during the same taxable year, has directly or indirectly paid, accrued or incurred such portion to an entity that is not an affiliate; or

(c) Paid, accrued, or incurred to an affiliate doing business in, or deriving income from, a state that imposes a tax on or measured by net income and, under that state's laws, the affiliate is subject to an income tax in that state. The portion of the intangible expense that will be approved for the deduction is that portion that, after applying the allocation and apportionment rules of the state, has been allocated or apportioned by the affiliate to that state. For purposes of this subdivision (b)(2)(N)(i)(c), the term "state" means a state of the United States of America, including the District of Columbia, and any United States possession or territory, but does not include those states under whose laws the taxpayer and the affiliate file or are included in a combined income tax report or return, a consolidated income tax report or return, or any other report or return of net income that includes the taxpayer

and the affiliate and where such return or report results in the affiliate's intangible income being offset or matched by the taxpayer's deduction in that state's report or return.

(ii)

(a) Except as provided in subdivisions (b)(2)(N)(ii)(b) or (b)(2)(N)(ii)(c), the taxpayer's application for the deduction in subdivision (b)(2)(N)(i) shall be made at such time and upon such forms and in such manner as prescribed by the commissioner and shall include such information as the commissioner may require.

(b) Any taxpayer whose deduction is based on the criteria set forth in subdivisions (b)(2)(N)(i)(a)-(c) shall be entitled to provide notice to the commissioner at the time of filing its return, rather than by making application sixty (60) days prior to the due date of the return as set forth in subdivision (b)(2)(N)(iii)(c).

(c) The commissioner may, through a conference with the taxpayer, review the facts and circumstances of the taxpayer's proposed intangible expense deduction and, by letter, agree that the taxpayer may be relieved of the requirement to file an application as otherwise provided herein.

(iii)

(a) If the commissioner approves the intangible expense deduction, or a portion thereof, such determination shall remain in effect so long as the taxpayer submits annually to the commissioner a certification that the facts and circumstances surrounding the transaction remain substantially unchanged; provided, however, the commissioner is authorized to require that the taxpayer reapply for the deduction beginning no sooner than five (5) years following the taxpayer's most recent application.

(b) If the commissioner denies the deduction, or a portion thereof, and the taxpayer nevertheless deducts the disallowed intangible expense, the commissioner shall assess the taxpayer any applicable tax, interest, and penalty resulting from the disallowance of such deduction, and the taxpayer shall be entitled to the remedies contained in chapter 1, part 18, of this title to contest such assessment.

(c) If the application is submitted to the commissioner at least sixty (60) days before the due date of the return and the commissioner has neither approved nor denied the application by the due date of the return, no penalty shall be assessed based on any disallowance of the deduction for intangible expenses, and no interest shall accrue on any such assessment from the due date of the return until the date upon which the commissioner issues a denial of the application.

SECTION 3. Tennessee Code Annotated, Section 67-4-2006(b)(2)(O), is amended by deleting the language “is not disclosed as required by subdivision (d)(1) or is otherwise disallowed under the provisions of this part” and by substituting instead the language “is included in the affiliate’s Tennessee net earnings or net losses and is not deducted by the affiliate under subdivision (b)(2)(N) of this section”.

SECTION 4. Tennessee Code Annotated, Section 67-4-2006, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) Any taxpayer that pays, accrues or incurs intangible expenses as a result of a transaction with one (1) or more affiliates and fails to add such expenses to net earnings or net losses in accordance with subdivision (b)(1)(K) shall be subject to a negligence penalty as set forth in Section 67-1-804(b)(2).

SECTION 5. Tennessee Code Annotated, Section 67-1-804(b)(2), is amended by deleting the first sentence and substituting instead the following:

When any person, upon the initial filing of the person's franchise and excise tax return, fails to comply with the requirements described in Sections 67-4-2006(d) or 67-4-2006(e) and such failure is determined by the commissioner to be due to negligence, there shall be imposed a penalty equal to the greater of ten thousand dollars (\$10,000) or fifty percent (50%) of any adjustment to the initially filed return made under Sections 67-4-2006(b)(1)(K) or 67-4-2006(e).

SECTION 6. Tennessee Code Annotated, Section 67-4-2103, is amended by adding the following as a new subsection (j):

(j)

(1) Upon written request by the taxpayer making the election under subsection (d), the commissioner is authorized, in the commissioner's discretion, to allow the exclusion of one or more persons that would otherwise be members of the taxpayer's affiliated group, if the commissioner determines that:

(A)

(i) Such persons are included in the taxpayer's affiliated group solely by virtue of a direct or indirect interest and are so operationally remote from the taxpayer that the taxpayer would be unable to obtain the information necessary to calculate the net worth of the group if such persons were included as members; or

(ii) Such person has a direct or indirect interest in both the taxpayer and one or more persons described in subdivision (j)(1)(A)(i) and is so operationally remote from the taxpayer that the taxpayer would be unable to obtain the information necessary to calculate the net worth of the group if such person was included as a member; and

(B) The exclusion of such persons from the affiliated group would result in a fair representation of the affiliated group's consolidated net worth.

(2) Such written request shall provide such information as may be reasonably required by the commissioner and shall be submitted on or before the due date of the tax return for the period for which such exclusion is to take effect. The commissioner is authorized to accept a late request if the commissioner determines that there is a good and reasonable cause for such action. If the commissioner allows the exclusion of persons from the taxpayer's affiliated group under subdivision (j)(1), all members of the taxpayer's affiliated group shall be bound by such exclusion.

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 1, Part 1, is amended by deleting Section 67-1-114 in its entirety and by substituting instead the following:

**67-1-114.**

(a) With respect to taxes imposed under chapter 2 of this title, under chapter 4, part 20 or 21 of this title, or under chapter 8, part 1 of this title, whenever the due date for filing the return occurs on a legal holiday as defined under 26 U.S.C. § 7503, the commissioner of revenue is authorized, in the commissioner's discretion, to extend the due date of such return to the next succeeding day that is not a Saturday, Sunday or legal holiday.

(b) With respect to taxes administered and collected by the commissioner of revenue, whenever the internal revenue service generally extends for all taxpayers the due date of a federal return or extends the due date of such return for a specified group of taxpayers such as, but not limited to, those affected by a federally declared disaster, the commissioner of revenue is authorized, in the commissioner's discretion, to extend the due date for the filing of specified

returns to a date that shall not be later than the last day of the extension period specified by the internal revenue service.

(c) For purposes of this section, "return" shall be deemed to include any remittance or other tax document, including, but not limited to, quarterly estimated payments and extension requests.

SECTION 8. Tennessee Code Annotated, Section 67-6-102(46)(H)(i), is amended by deleting the language "a corporation subject to Tennessee franchise, excise taxes," and by substituting instead the language "the taxpayer".

SECTION 9. Sections 1 through 5 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax years ending on or after July 1, 2012. Section 7 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to returns with due dates on or after April 1, 2012. All remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.